135

(2)

NO. 09-39

Supreme Court, U.S.
FILED
AUG 4 - 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

DUFRENE BOATS, INC.,

Petitioner

VERSUS

NGA TRINH, INDIVIDUALLY AND ON BEHALF OF HAO TRAN AND LYNN TRAN,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA 1ST CIRCUIT COURT OF APPEAL

BRIEF IN OPPOSITION

JOHN BLACKWELL
Counsel of Record
1105 Parkview Drive, Suite 1
New Iberia, Louisiana 70560
Telephone: (337) 367-8517

MICHAEL D. LOPRESTO
203 West Main Street, Suite 200
New Iberia, Louisiana 70560
Telephone: (337) 367-3561

COUNSEL FOR RESPONDENTS

RESPONSE TO QUESTIONS PRESENTED

Respondents contest the jurisdiction of the Court to decide the issues presented. It is contended that the ability of the federal judiciary to review cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. Respondents submit that the issues contained in the petition are moot.

The actions of the Petitioner prior to the filing of this petition for writ of certiorari to this Court are such that the controversy between the parties has been rendered moot. Petitioner has paid the judgment in full without reservation of any rights and by its own volition.

The effects of the judgment have been cancelled by the execution of several satisfactions of the judgment all at the request of the petitioner. Pursuant to Louisiana state law, the obligations of Petitioner created by the judgment have been satisfied. Under federal law and precedent, the case is not fit for federal adjudication as an actual controversy between the parties does not exist.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

JURISDICTION 1

CONSTITUTIONAL PROVISION AND
STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

REASONS PETITION FOR
WRIT OF CERTIORARI MUST BE DENIED 4

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) 5

Ford Motor Credit Co. v. Guillory, 335 So.2d 36 (La. App. 3 Cir., 1976) 8

Liner v. Jafco, Inc., 375 U.S. 301, 306 n. 3, 84 S.Ct. 391, 394, 11 L.Ed.2d 347 (1964) 5

North Carolina v. Rice, 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971) 5

North Carolina v. Rice, supra, 404 U.S., at 246, 92 S.Ct., at 404 5

Powell v. McCormack, 395 U.S. 486, 496 n. 7, 89 S.Ct. 1944, 1950, 23 L.Ed.2d 491 (1969) 5

Robin v. Concerned Citizens for Better Education in St. Bernard, Inc., 384 So.2d 405, 406 (La.1980) 6

Sibron v. New York, 392 U.S. 40, 50 n. 8, 88 S.Ct. 1889, 1896, 20 L.Ed.2d 917 (1968) 5

Thibodeaux v. Phillips, 2006-1282 (La.App. 3 Cir. 3/7/07); 952 So.2d 912, writ denied 0725 (La. 6/29/07); 959 So.2d 518 7

United Companies Lending Corp. v. Hall,); 97-2525 La.App. 1 Cir. 11/6/98, 722 So.2d 48 (La. App. 1 Cir., 1998) 8

United States v. Alaska, 253 U.S. 113, 40 S.Ct. 448, 64 L.Ed. 808(1920) 5

Winbush v. Son. Ry. Co., 2006 2066 (La. App. 1 Cir. 6/8/07); 959 So.2d 1220 7

Statutes

28 U.S.C. § 1333 2

La. Civil Code Article 1854 6

La. Code of Civil Procedure Article 2085 7

Constitutional Provisions

United States Constitution, article III, § 2: 1

JURISDICTION

This matter was tried before a judge in the 16th judicial District Court in and for the Parish of St. Mary, State of Louisiana. The judgment and reasons of the trial court are unreported, but are attached to the original petition filed herein. The Louisiana First Circuit Court of Appeal affirmed the trial court by opinion dated January 22, 2009. That opinion is reported at 6 So.3rd 830 (La. App. 1st Cir. 2009). An application for writ of certiorari to the Louisiana Supreme Court was denied on April 13, 2009. The denial is reported at 5 So.3rd 166 (La. 2009). The petitioner filed its petition for a writ of certiorari with this Court on July 7, 2009. A response to the petition is due by respondents on August 10, 2009.

The petitioner has invoked the jurisdiction of this court pursuant to 28 USC § 1257. Respondents contest the jurisdiction of the Court to decide the issues presented. It is contended that the ability of the federal judiciary to review cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. Respondents submit that the issues contained in the petition are moot.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, article III, § 2:

"The judicial power shall extend...to all cases of admiralty and maritime jurisdiction."

28 U.S.C. § 1333:

"The district courts shall have original jurisdiction, exclusive of courts of the States, of:

(1) Any civil cases of Admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

STATEMENT OF THE CASE

The Petitioner was the owner and operator of the M/V John 3:16 on or about April 27, 2004. The vessel, a tugboat, was pushing six barges in the Intracoastal Waterway around the Ivanhoe Canal and the Louisa Bridge during the morning hours.

At the same time, Thuan Tran, a crab fishermen, was operating his small fishing boat through the Ivanhoe Canal approaching the Intracoastal Waterway. It is undisputed that a collision occurred between the small fishing boat and the tugboat in the Intracoastal Waterway.

Petitioner filed a motion for partial summary judgment on the issue of non-pecuniary damages. The motion was denied by the trial court judge. An application for a writ of certiorari was filed with the First Circuit Court of Appeal, State of Louisiana. The writ was denied. Thereafter, an application for writ of certiorari was filed with the Louisiana Supreme Court seeking a review of the trial

judge's denial of the motion for partial summary judgment. That application, likewise, was denied.

After trial, the trial judge found, as a matter of fact, that the collision was a result of the negligence of both Thuan Tran and a Petitioner. The trial court assessed Tran with 40% negligence and Petitioner with 60% negligence. A judgment was signed in accordance with the judge's ruling.

Petitioner appealed the decision of the trial judge to the First Circuit Court of Appeal on all aspects of liability. The appellate court affirmed the trial judge on all issues of liability including the granting of both pecuniary and non-pecuniary damages. Thereafter, Petitioner, forwarded to Respondents, a sum of money equal to the pecuniary portion of damages awarded in the judgment. Petitioner obtained a partial satisfaction of the judgment from the Respondents (See Exhibit 1). There was no reservation of rights contained in the partial satisfaction.

Petitioner filed a petition for writ of certiorari to the Louisiana Supreme Court seeking a review of the judgment with respect to the non-pecuniary damages to the Respondents. That petition was denied, and, as a result, the judgment became final. Petitioner filed a request for a stay of execution of judgment with the Louisiana Supreme Court. The request for the stay was denied.

The Respondents filed a judgment debtor rule which was set for hearing. Petitioner then forwarded to the Respondents the balance due on the judgment. The Respondents executed a satisfaction of the judgment (See Exhibit 2). Again, there was no reservation of any rights by

Petitioner. Petitioner then filed this petition for writ of certiorari to the U.S. Supreme Court seeking a review of the trial court's judgment awarding non-pecuniary damages. Because of a lack of appropriate language in the second satisfaction (Exhibit 2) , Petitioner asked the Respondents to execute another satisfaction which specifically authorized the cancellation of the effects of the judgment in the mortgage records of St. Mary Parish, Louisiana (See Exhibit 3). Again, there was no reservation of any rights by Petitioner

REASONS PETITION FOR WRIT OF CERTIORARI MUST BE DENIED

Petitioner seeks a review of the decision of the lower courts on the issue of awarding of non-pecuniary damages in a maritime case. However, the status of the matter immediately prior to the filing of the petition to this Court is that the judgment of the lower courts has been paid by Petitioner by its own volition, and without reservation of rights. The Respondents have executed a partial satisfaction of judgment and two full satisfactions of the lower court judgment. The judgment has been paid in full. The judicial mortgage created as a result of the filing of the judgment in the mortgage records of St. Mary Parish, Louisiana, has been canceled. There is no longer a controversy between the parties. The issues presented by petitioner are moot.

The starting point for analysis on the issue of mootness is the proposition that "federal courts are without

power to decide questions that cannot affect the rights of litigants in the case before them." ***North Carolina v. Rice, 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971).*** The inability of the federal judiciary 'to review moot cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' ***Liner v. Jafco, Inc., 375 U.S. 301, 306 n. 3, 84 S.Ct. 391, 394, 11 L.Ed.2d 347 (1964); see also Powell v. McCormack, 395 U.S. 486, 496 n. 7, 89 S.Ct. 1944, 1950, 23 L.Ed.2d 491 (1969); Sibron v. New York, 392 U.S. 40, 50 n. 8, 88 S.Ct. 1889, 1896, 20 L.Ed.2d 917 (1968).*** To qualify as a case fit for federal adjudication, an actual controversy must be extant at all stages of the review, not merely at the time the petition is filed. ***Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997).*** "(E)ven in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction." ***North Carolina v. Rice, supra, 404 U.S., at 246, 92 S.Ct., at 404***.

In ***United States v. Alaska, 253 U.S. 113, 40 S.Ct. 448, 64 L.Ed. 808(1920)***, the Court dealt with a request to annul an order of the Interstate Commerce Commission. Pending the appeal, the Transportation Act of 1920 was passed making the order moot. Justice Day delivering the opinion of the Court wrote:

> "Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly. However convenient it might be to have decided the question of the power of the Commission to

> require the carriers to comply with an order prescribing bills of lading, this court 'is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard.' California v. San Pablo & Tulare R. Co., 149 U. S. 308, 314, 13 Sup. Ct. 876, 878 (37 L. Ed. 747); United States v. Hamburg American Line, 239 U. S. 466, 475, 476, 36 Sup. Ct. 212, 60 L. Ed. 387, and previous cases of this court therein cited."

Under Louisiana law, the performance by the obligor extinguishes the obligation. See ***La. Civil Code Article 1854.*** By payment of the judgment, the obligation of Petitioner created by the judgment has been extinguished pursuant to that Louisiana Code article.

A moot case is one which seeks a judgment or decree which, when rendered, can give no practical relief. ***Robin v. Concerned Citizens for Better Education in St. Bernard, Inc., 384 So.2d 405, 406 (La.1980).*** Because the judgment has been paid and extinguished and its mortgage effects canceled in the public records of St. Mary Parish, Louisiana, a reversal of the judgment can provide no practical relief to the petitioner.

The issue of mootness after payment of a judgment is further addressed by Article 2085 of the Louisiana Code of Civil Procedure which provides in pertinent part:

> "An appeal cannot be taken by a party who confessed judgment in the proceedings in the trial court or who voluntarily and unconditionally acquiesced in the judgment rendered against him." ***La. Code of Civil Procedure Article 2085***

In ***Winbush v. Son. Ry. Co., 2006 2066 (La. App. 1 Cir. 6/8/07); 959 So.2d 1220*** the Court dealt with a personal injury matter in which a motion for new trial followed a judgment of the trial court granting an award of costs. The Court held that the judgment was rendered moot by a subsequent compromise and satisfaction after the parties filed a Joint Motion an Order for Final Dismissal. The Court dismissed the appeal as moot.

In ***Thibodeaux v. Phillips, 2006-1282 (La.App. 3 Cir. 3/7/07); 952 So.2d 912, writ denied 0725 (La. 6/29/07); 959 So.2d 518*** the Court wrote:

> "Pursuant to La. Code Civ.P. art. 2085, "[a]n appeal cannot be taken by a party who confessed judgment in the proceedings in the trial court or who voluntarily and unconditionally acquiesced in a judgment rendered against him." This court addressed the dismissal of an appeal where an appellant acquiesced in a settlement of his claim, stating: "The acquiescence that prohibits an

> appeal, or destroys it when taken, is the acquiescence in a decree commanding something to be done or given. If the thing commanded to be done or given is done or given, there has been acquiescence in the judgment." *West v. Bruner Health Group, Inc.*, 03-152, p. 8 (La.App. 3 Cir. 10/29/03), 866 So.2d 260, 267, *units denied*, 04-913, 04-935 (La. 6/18/04), 876 So.2d 805, 806 (quoting *Times Picayune Publ'g Corp. v. New Orleans Aviation Bd.*, 99-237, p. 5 (La.App. 5 Cir. 8/31/99), 742 So.2d 979, 982, *unit denied*, 99-2838 (La. 12/10/99), 751 So.2d 257)."

The actions of the Petitioner prior to the filing of this petition for writ of certiorari to this Court are such that the controversy between the parties has been rendered moot. Petitioner paid the judgment in full without reservation of any rights and by its own volition. There was no seizure and sale of assets albeit one was implicitly threatened by the filing of the Judgment Debtor Rule.[1] Any question concerning the judgment is now moot as there can be no effective relief granted by the Court.

---

[1] Even permitting the execution of the judgment through the seizure and sale of assets may not have preserved the issues from a claim of mootness. See ***Ford Motor Credit Co. v. Guillory, 335 So.2d 36 (La. App. 3 Cir., 1976),*** and ***United Companies Lending Corp. v. Hall,); 97-2525 La.App. 1 Cir. 11/6/98, 722 So.2d 48 (La. App. 1 Cir., 1998)***

CONCLUSION

For reasons presented above, the Petition for Writ of Certiorari seeking a review of the judgment of the trial court should be denied.

RESPECTFULLY SUBMITTED,

JOHN BLACKWELL
ATTORNEY AT LAW
1105 PARKVIEW DRIVE, SUITE 1
POST OFFICE BOX 10051
NEW IBERIA, LOUISIANA 70562

COUNSEL FOR RESPONDENTS

AND

MICHAEL D. LOPRESTO
ATTORNEY AT LAW
203 WEST MAIN STREET, SUITE 200
NEW IBERIA, LOUISIANA 70560
(337) 367-3561

EXHIBITS

SIXTEENTH JUDICIAL DISTRICT COURT FOR THE

PARISH OF ST. MARY

STATE OF LOUISIANA

NO. 113230

DIVISION "B"

c/w 114096

NGA TRINH, INDIVIDUALLY AND ON BEHALF OF

HAO TRAN AND LYNN TRAN

VERSUS

DUFRENE BOATS, INC.

FILED: _____

_____

DEPUTY CLERK

PARTIAL SATISFACTION OF JUDGMENT

COMES NOW plaintiff, Nga Trinh, individually and on behalf of Hao Tran and Lynn Tran, through undersigned counsel, to advise that the final Judgments obtained in this matter on November 21, 2007 for $911,699.40 and January 22, 2009, for $8,896.75 against Dufrene Boats, Inc., plus

post-judgment interest at the judicial rate, have been partially satisfied in the amount of $354,069.90 as of February 26, 2009.

New Iberia, Louisiana, this 16th day of March, 2009.

/s/JOHN BLACKWELL

JOHN BLACKWELL, BAR # 03118
P.O. BOX 10051
NEW IBERIA, LOUISIANA 70562-0051
TELEPHONE 337/367-8517
ATTORNEY FOR PLAINTIFF

SIXTEENTH JUDICIAL DISTRICT COURT FOR THE

PARISH OF ST. MARY

STATE OF LOUISIANA

NO. 113230

DIVISION "B"

c/w 114096

NGA TRINH, INDIVIDUALLY AND ON BEHALF OF

HAO TRAN AND LYNN TRAN

VERSUS

DUFRENE BOATS, INC.

FILED: _____

_____

DEPUTY CLERK

SATISFACTION OF JUDGMENT

COMES NOW plaintiff, Nga Trinh, individually and on behalf of Hao Tran and Lynn Tran, through undersigned counsel, to advise that the final Judgments obtained in this matter on November 21, 2007 for $911,699.40 and January 22, 2009, for $8,896.75 against Dufrene Boats, Inc., plus

post-judgment interest at the judicial rate, less a previous payment of $354,069.90, have been satisfied with a final payment of $673,035.03.

New Iberia, Louisiana, this 12th day of June, 2009.

/s/ JOHN BLACKWELL

JOHN BLACKWELL, BAR # 03118
P.O. BOX 10051
NEW IBERIA, LOUISIANA 70562-0051
TELEPHONE: 337/367-8517
ATTORNEY FOR PLAINTIFF

SIXTEENTH JUDICIAL DISTRICT COURT FOR THE

PARISH OF ST. MARY

STATE OF LOUISIANA

NO. 113230

DIVISION "B"

c/w 114096

NGA TRINH, INDIVIDUALLY AND ON BEHALF OF

HAO TRAN AND LYNN TRAN

VERSUS

DUFRENE BOATS, INC.

FILED: _____

_____

DEPUTY CLERK

SATISFACTION OF JUDGMENT

COMES NOW plaintiff, Nga Trinh, individually and on behalf of Hao Tran and Lynn Tran, through undersigned counsel, to advise that the final Judgments obtained in this matter on November 21, 2007 for $911,699.40 and January 16, 2008, for $8,896.75 against Dufrene Boats, Inc., plus

post-judgment interest at the judicial rate, less a previous payment of $354,069.90, have been satisfied with a final payment of $673,035.03, and the Clerk is requested to fully cancel both Judgments to the extent they have been filed in the mortgage records.

New Iberia, Louisiana, this 12th day of June, 2009.

/s/ JOHN BLACKWELL

_____

JOHN BLACKWELL, BAR # 03118
P.O. BOX 10051
NEW IBERIA, LOUISIANA 70562-0051
TELEPHONE: 337/367-8517
ATTORNEY FOR PLAINTIFF